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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5916 of 2007
Date of decision: 16.11.2007

Housing Board Haryana **...Petitioner**

Versus

Suresh and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Suresh Ahlawat, Advocate for the petitioner.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated August 31, 2007 passed by the learned Civil Judge (Senior Division), Panchkula whereby defence of petitioner/defendant no.3 was struck off.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondents as the same would unnecessarily delay not only disposal of the present petition but the suit as well.

Learned counsel for the petitioner/defendant no.3 submitted that respondent no.1/plaintiff filed the suit for declaration in the trial Court on January 2, 2007 and petitioner/defendant no. 3 appeared after receipt of notice on May 31, 2007. However, reply to the plaint could not be filed within time due to non receipt of the copy of plaint alongwith summons. He submitted that in case one opportunity is granted to petitioner/defendant no.3, it will file written statement on the date to be fixed by the trial Court.

As far as the period prescribed for filing the written statement under Order 8 Rule 1 CPC, is concerned, the same has been held to be directory in nature by judgments of Hon'ble the Supreme Court in **Kailash v. Nanhku and others,** 2005(2) RCR(C) 379 and **Surender Singh and others v. Omvati and others,** 2005(3) RCR(C) 786. It is further held therein that in exceptional circumstances the Court can extend time beyond

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90 days for filing written statement so as to avoid injustice being caused to the parties.

In a recent judgment in **M/s R.N.Jadi & Brothers & others v. Subhashchandra**, 2007(2) RCR(C) 139, Hon'ble the Supreme Court considered the issue. Trial Court in **R.N.Jadi's case (supra)** had granted time till a date which was beyond 90 days, however, written statement filed on that date was not accepted. Hon'ble the Supreme Court, while accepting the plea of the defendant in that case directed the trial court to take note of the written statement already filed by the defendant therein. The relevant observations of Hon'ble the Supreme Court are extracted below:-

> "8. Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.
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> 9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual

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law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justiciae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence-processual, as much as substantive"

Having heard learned counsel appearing for the petitioner/defendant no.3 and considering the position of law as referred to above, I find merit in the submissions made by learned counsel for the petitioner/defendant No. 3. Keeping in view interest of justice and the fact that reply to the plaint could not be filed within time due to non receipt of the copy of plaint alongwith summons by petitioner/defendant no. 3, the petitioner being a Board created by the State where officers work with impersonal attitude and that defence of petitioner was struck off on 92th day, I grant one opportunity to the petitioner/defendant No. 3 for filing written statement on the date already fixed by the trial Court. However, the same shall be subject to payment of Rs. 5000/- as costs to the plaintiff/respondent no.1. However, it is made clear that no further

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opportunity shall be granted to the petitioner-defendant no.3 in case, it fails to file written statement on the date fixed.

The revision petition is disposed of in the manner indicated above.

November 16, 2007 **(Rajesh Bindal)**
Pka **Judge**